

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 70

IRA TAYLOR,

Appellant,

vs.

THE STATE OF GEORGIA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

STATEMENT AS TO JURISDICTION.

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IN THE SUPREME COURT OF GEORGIA

No. 13498

IRA TAYLOR,

vs.

Appellant,

THE STATE OF GEORGIA,

Appellee.

STATEMENT AS TO JURISDICTION.

In compliance with Paragraph 1 of Rule 12 of the Rules of the Supreme Court of the United States, the appellant submits herewith his Statement upon which it is contended that the Supreme Court of the United States has jurisdiction upon Appeal to review the judgment in the above entitled cause.

Opinion Below.

The opinion of the Supreme Court of Georgia has not yet been officially reported. It appears at Pages 53-57 of the Record and a copy thereof is appended hereto. No opinion was written by the trial court.

Jurisdiction.

This Court has jurisdiction under Section 237 (a) of the Judicial Code as amended by the Acts of February 13, 1925, January 31, 1928, and April 26, 1928 (28 U. S. C. A. Section

344a) to review the judgment of the court below upon appeal.

I.

The Appeal is Timely.

The judgment of the Supreme Court of Georgia was entered on the 13th day of March, 1941. The Petition for the allowance of an Appeal was presented to the Honorable Charles S. Reid, Chief Justice of the Supreme Court of the State of Georgia on the 8th day of April, 1941, and was allowed by him on said date (R. 62).

II.

The validity of a State statute under the Federal Constitution was drawn into question and the decision was in favor of its validity.

A.

THE STATUTE.

The statute under which the appellant was tried and convicted, and the validity of which is assailed by the appellant, is the Act of August 15, 1903 (Georgia Laws 1903, page 90; Section 26-7408 and 26-7409 Code of 1933) which provides as follows:

“Section 1. Be it enacted * * * That from and after the passage of this Act if any person shall contract with another to perform for him services of any kind with intent to procure money, or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer; or after having so contracted, shall procure from the hirer money, or other thing of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as prescribed in section 1039 of the Code.

"Sec. 2. Be it further enacted, That satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

The punishment for a misdemeanor as provided by Section 1039 of the Code of Georgia (Code 27-2506) is as follows:

"Misdemeanors, how punished.—Except where otherwise provided, every crime declared to be a misdemeanor shall be punishable by a fine not to exceed \$1,000, imprisonment not to exceed six months, to work in the chain gang on the public roads, or on such other public works as the county or State authorities may employ the chain gang, not to exceed 12 months, any one or more of these punishments in the discretion of the judge * * *."

The Statute, as construed and applied to the Appellant's case, was declared to be valid both by the trial court and by the Supreme Court of Georgia, as against Appellant's contention that it was violative of the 13th and 14th Amendments to the Constitution of the United States and of the Act of Congress forbidding peonage found in the United States Revised Statutes, Section 1990, 5526 (8 U. S. C. A. 56). In affirming Appellant's conviction under the Statute, the Supreme Court of Georgia construed and applied the Statute to the facts of Appellant's case and the decision was in favor of its validity.

B.

NATURE OF THE CASE.

The Appellant, a negro, was indicted by the Grand Jury of Wilkinson County, Georgia, for an alleged violation of

the Act of August 15, 1903 (Section 26-7408 and 26-7409 Code of 1933) above set out, the indictment charging the accused with a misdemeanor for that the said accused on the 25th day of March, 1939 "did then and there unlawfully and with force and arms, after having contracted with R. L. Hardie to do manual labor for him at \$1.25 per day in helping to build a house on the farm of R. L. Hardie where he then resided in said county, said work to begin when R. L. Hardie called for him to start and to continue until he had worked out the sum of \$19.50, did on the strength of said contract procure an advance, on said labor, of \$19.50 with intent not to perform same, and did fail and refuse to perform same, without good and sufficient cause, and did fail and refuse to pay the money so advanced back at the time the work was to be performed, to the loss and damage of the hirer" (R. 7).

The Appellant filed his General Demurrer to the indictment on the ground that the Statute under which he was indicted violated the 13th and 14th Amendments to the Constitution of the United States and the provisions of the Act of Congress forbidding peonage, enacted to secure the enforcement of the 13th Amendment, found in the United States Revised Statutes, Section 1990, 5526 (8 U. S. C. A. 56) (R. 9).

The Demurrer charged that the Statute under which Appellant was indicted was violative of the 13th Amendment to the Constitution of the United States and of the Act of Congress forbidding peonage, because in so far as the refusal without good and sufficient cause to perform the service contracted for or to return the money advanced under the contract is made presumptive evidence of an intent to defraud, without otherwise showing any fraudulent intent on the part of the accused, the purpose operation and effect of the Statute is to compel a man to labor for another in payment of a debt, thus compelling under

the sanction of the criminal law the enforcement of a contract for personal service; and that the Statute thus exposed the Appellant to conviction and punishment for a crime merely upon proof of breach of contract for personal service in liquidation of a debt; especially since under the laws of Georgia, the accused may not for the purpose of rebutting the statutory presumption, testify as a witness under oath (R. 9).

The Appellant's Demurrer further charged that the Statute under which Appellant was indicted deprived the Appellant of his liberty without due process of law in violation of Section 1 of the 14th Amendment to the Constitution of the United States, because in so far as the refusal without good and sufficient cause to perform the service or to return the money is made by the Statute presumptive evidence of an intent to defraud, without otherwise showing any fraudulent intent on the part of the accused, the presumption is unreasonable and arbitrary in that the failure to return the money or to complete the labor bears no logical relation to the fact presumed, and points to no specific act or omission on the part of the accused tending to show any fraudulent intent, the presumption of guilt thus being made by Statute sufficient to outweigh the presumption of innocence and putting the burden on the accused to negative or explain away every fact which might tend to show a fraudulent intent on his part, especially since under the laws of Georgia the accused may not for the purpose of rebutting the statutory presumption testify as a witness under oath (R. 11-13).

The Demurrer was overruled by the Court, to which ruling exceptions *pendente lite* were filed as required by State practice, the Defendant entered a plea of not guilty, and the case came on for trial.

In his charge to the jury the Court charged in the language of the Statute (R. 27-28) and refused to charge as

requested by the Appellant that the Statute was unconstitutional and void (R. 30-31). The verdict of guilty was found by the jury and the Court sentenced the Appellant to pay a fine of \$35.00 including costs or to work at hard labor on the chain gang for 8 months (R. 16).

The Appellant filed his Amended Motion for New Trial and Motion in Arrest of Judgment based on the same constitutional grounds set up in his General Demurrer to the indictment and the additional ground that the Statute was repugnant to Article 1, Section 1, Paragraph 21 of the Constitution of the State of Georgia (Section 2-121, Code 1933) prohibiting imprisonment for debt (R. 32-49).

The trial court overruled the Motion in Arrest of Judgment and the Amended Motion for New Trial (R. 50) and the Appellant appealed to the Supreme Court of Georgia, his Bill of Exceptions assigning error on the action of the trial court in overruling his Demurrer, Motion in Arrest of Judgment and his Motion for New Trial (R. 1-4).

The Supreme Court of Georgia affirmed the judgment of the lower court, the opinion of the Court stating (a) the Statute is not violative of the 13th Amendment to the Constitution of the United States nor of the Act of Congress forbidding peonage found in United States Revised Statutes 1900, 5526 (8 U. S. C. A. 56); (b) nor is the Statute violative of the Due Process Clause and the Equal Protection Clause of the 14th Amendment to the Constitution of the United States; (c) nor did the Court err in charging the jury in terms of the Statute, nor in refusing Defendant's request to charge that the Statute was unconstitutional and void; (d) the Court refused to overrule its prior decisions holding the Statute valid, and held that the decisions of the Supreme Court of the United States in the cases of *Bailey v. Alabama*, 219 U. S. 219; *Manley v. State of Georgia*, 279 U. S. 1, and *Western & Atlantic Ry. Co. v. Henderson*, 279 U. S. 639, were not controlling (R. 53-56).

C.

**THE FEDERAL QUESTIONS WERE PROPERLY RAISED AND WERE
DECIDED ADVERSELY TO THE APPELLANT.**

The Federal questions were raised by the Appellant in his Demurrer to the indictment (R. 9-13), in Appellant's Objections to the Charge of the Court (R. 30-31), in the Motion in Arrest of Judgment, and in the Motion for New Trial (R. 32-39), and in the Bill of Exceptions taking the case to the Supreme Court of Georgia (R. 1-4), and the Supreme Court of Georgia actually passed on all Federal questions raised in the court below by the Appellant and decided said questions adversely to the Appellant (R. 53-56). Both the trial court and the Supreme Court of Georgia held that the Statute under which the Appellant was indicted and convicted was not violative of any of the constitutional objections raised by the Appellant.

Accordingly, the Supreme Court of the United States has jurisdiction upon Appeal to review the judgment of the Supreme Court of Georgia.

III.

**The Appeal is from a final judgment of the highest court
of the State of Georgia, the Supreme Court of Georgia.**

The judgment directs that the judgment of conviction of the lower court be affirmed (R. 57). It is final both in form and in substance, the Supreme Court of Georgia being the highest court of the State of Georgia.

The Federal Questions Presented Are Substantial.

(1) Whether a State Statute may, without violating the 13th Amendment and the provisions of the Act of Congress forbidding peonage, make criminal a mere breach

of contract for personal service in liquidation of a debt, without proof of any fraud or fraudulent intent on the part of the accused, is a substantial Federal question.

Such a Statute is unconstitutional, illegal and void under the decision of the Supreme Court of the United States in *Bailey v. Alabama*, 219 U. S. 219 wherein a similar Statute of the State of Alabama was held to be violative of the 13th Amendment to the Federal Constitution and against the provisions against peonage found in United States Revised Statutes 1990, 5526 (8 U. S. C. A. 56). Though there has been no authoritative determination in any subsequent case that the principle ruled in the *Bailey* case has in any way been altered or abandoned by the Supreme Court of the United States, the Supreme Court of Georgia adhered to its two previous rulings in *Wilson v. State*, 138 Ga. 489 and in *Latson v. Wells*, 136 Ga. 681, to the effect that the decision of the Federal Supreme Court in *Bailey v. Alabama* was not controlling and refused to overrule its previous decisions holding the Statute valid and constitutional (R. 54). The ruling of the Georgia Supreme Court in *Wilson v. State*, *supra*, is condemned in the note appended to 8 U. S. C. A. Section 56 at page 66. See also *United States v. Reynolds*, 235 U. S. 133.

(2) The Appellant further charges that the Statute under which he was indicted and convicted deprived him of his liberty without due process of law in that the presumption of fraudulent intent raised by the Statute is unreasonable and arbitrary and operates to deny the accused a fair opportunity to repel it in that the failure to return the money or to perform the labor bears no logical relation to the fact presumed, namely fraudulent intent, and points to no specific act or omission on the part of the accused tending to show any fraudulent intent. The presumption of guilt raised by the Statute is thus made sufficient to

outweigh the presumption of innocence and puts the burden on the accused to negative or explain away every fact which might tend to show a fraudulent intent, especially since under the laws of Georgia the accused may not for the purpose of rebutting the statutory presumption testify as a witness under oath (Code 1933, Section 38-415), (R. 11-13).

The Supreme Court of the United States in *Bailey v. Alabama*, *supra*, having held that the Alabama Statute was repugnant to the 13th Amendment and to the peonage Statute enacted to secure the enforcement of the Amendment, said that it was unnecessary to consider the contention that the Statute also violated the 14th Amendment; yet the Court in its opinion denies the right of a State to enact a Statute making proof of one fact *prima facie* evidence of the main fact at issue, where the presumption is purely arbitrary, and where the accused is deprived of a proper opportunity to repel it, as violative of the requirements of due process, and the court cites with approval *Ex parte Hollman*, 79 S. C. 22, 21 L. R. A. (N. S.) 249, which holds that such a Statute is violative of both the Equal Protection and Due Process Clauses of the 14th Amendment.

In *Manley v. State of Georgia*, 279 U. S. 1, the Supreme Court of the United States held that a Georgia Statute providing that every insolvency of a Bank shall be deemed fraudulent as to the President and Directors, operates as a denial of due process in that the presumption created by the Statute was unreasonable and arbitrary, as pointing to no specific transaction, matter or thing or to any act or omission of the accused tending to show his responsibility. In the opinion, the Court stated that inference of crime and guilt may not reasonably be drawn from inability to pay demand deposits and other debts as they mature, and held that a State law creating a presumption

that is arbitrary or that operates to deny a fair opportunity to repel it, violates the Due Process Clause of the 14th Amendment. To the same effect:

Hawes v. State of Georgia, 258 U. S. 1;

Casey v. U. S., 276 U. S. 413;

Western & Atlantic Ry. Co. v. Henderson, 279 U. S. 639.

(3) The Appellant further charges that the Statute deprives the Appellant of his liberty without due process of law in that it is too vague and indefinite and uncertain to provide a sufficiently ascertainable standard of guilt, the Statute failing to define what is meant by "good and sufficient cause." The Statute leaves the standard of guilt to be determined by the views of different courts and juries which may be called upon to enforce the Statute. "Men of common intelligence must necessarily guess at its meaning and differ as to its application."

U. S. v. Cohen Grocery Co., 255 U. S. 81;

Herndon v. Lowry, 301 U. S. 242.

(4) The Appeal raises the further substantial Federal question that the Statute is repugnant to the equal protection clause of the 14th Amendment because it provides an unlawful discrimination against the laboring class and confers a special privilege or immunity on all other persons.

As stated by the court in the *Peonage Cases*, 123 Fed. 671, it is a vicious species of class legislation. Under the terms of the Statute the laborer is to be punished for his breach while no penalty is provided for the landlord. Such a Statute is not a legitimate exertion of the power of classification, rests upon no reasonable basis, is purely arbitrary and plainly denies the equal protection of the laws to those against whom it discriminates.

Ex Parte Hollman, 79 S. C. 9, 21 L. R. A. (N.S.) 242.

The parties to a contract are entitled to equal sanctions of the law for the protection and enforcement of their rights under it.

Ex Parte Drayton, 153 Fed. 986.

The Supreme Court of the United States has jurisdiction on appeal to determine whether a State Statute as construed and applied to the facts of a particular case by the highest court of the State is in conflict with the Federal Constitution, for the application of the Statute affirms its validity as so applied.

Fiske v. Kansas, 274 U. S. 380.

Conclusion.

Wherefore, it is respectfully submitted that the Appellant in the above entitled cause comes within the proper jurisdiction of the Supreme Court of the United States.

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